



# **PUBLIC EMPLOYMENT RELATIONS BOARD**

## **2002-2003 ANNUAL REPORT**

**October 15, 2003**



**GRAY DAVIS, GOVERNOR**

**STATE OF CALIFORNIA**

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### **Board Members**

RICHARD T. BAKER  
ALFRED K. WHITEHEAD  
THEODORE G. NEIMA

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## **Message from the Board**

The Public Employment Relations Board (PERB or Board) respectfully submits its 2002-2003 Annual Report to the Legislature, summarizing PERB's activities during the past fiscal year. PERB was initially established more than 25 years ago as the Educational Employment Relations Board to administer the collective bargaining statute covering public school and community college employees. Over the years the Legislature expanded the Board's jurisdiction to include administration of the collective bargaining statutes covering employees of the State of California, the University of California, and the California State University. In 2001, the Legislature added municipal, county, and local special district employees to PERB's jurisdiction. This addition almost doubled the number of employees subject to PERB's jurisdiction to nearly two million with over 7,000 public employers.

As expected, the addition of municipal, county and local special district employees to PERB's jurisdiction triggered an upward spiral in PERB's workload. This trend continued in fiscal year 2002-2003. Although the workload has continued to increase, PERB's resources have not. Even before 2001, PERB has been one of the smallest State agencies with fewer than 37 dedicated employees. To combat its ever increasing responsibilities in the face of decreasing resources, PERB employees have had to work harder and more efficiently than ever before. Despite these difficult financial times, the executive staff, administrative law judges, lawyers, and employees of PERB have performed their duties in accordance with the highest standards of conduct, and in a manner that demonstrates fair and balanced respect for public employers and employees.

Looking ahead, the future year promises many more challenges for PERB. As it did last year, the Board notes that further reductions to its budget could compromise, or even cripple, PERB's ability to fulfill its statutory mandates. Despite the possibility of critical budget cuts, the Board remains focused on its mission to administer California's complex and ever-changing public sector labor relations statutes in a manner fair to both employers and the hard-working men and women who have dedicated their lives to public service. The Board welcomes the continued support of the Governor and the Legislature in fulfilling this mission.

To obtain additional information about PERB, its organization, functions and workload, please access the website at [www.perb.ca.gov](http://www.perb.ca.gov).

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Richard T. Baker  
Board Member

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Alfred K. Whitehead  
Board Member

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Theodore G. Neima  
Board Member

## **Introduction of Board Members and Administrators**

### **Board Members**

Appointed to the Board on March 29, 2000, **Richard T. Baker** was previously a self-employed labor relations consultant. From 1973 to 1995, he was the owner of the labor relations and consulting firm of Blanning and Baker Associates in Sacramento, San Francisco and Los Angeles. Mr. Baker earned a Bachelor of Arts Degree from California State University, Sacramento. His current term expires on December 31, 2003.

Appointed to the Board on January 3, 2001, **Alfred K. Whitehead** is General President Emeritus for the International Association of Fire Fighters (IAFF), where he served from 1988 to August 2000. In 1982, he was elected General Secretary/Treasurer of the IAFF and was re-elected through 1988. Mr. Whitehead served as a fire captain for the Los Angeles County Fire Department from 1954 to 1982. He was a member of the Los Angeles County Fire Fighters Local 1014 for more 20 years and was President for 12 years. Mr. Whitehead is a former member of the Los Angeles County Board of Retirement and served as an elected official to the National Conference on Public Employee Retirement Systems for more than 17 years. He attended East Los Angeles College, is a veteran of the United States Army, and also served as a United States Merchant Marine. His current term expires on December 31, 2005.

Appointed to the Board on August 7, 2001, **Theodore G. Neima** was formerly a Grand Lodge Representative for the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), a position he held since 1979. In 1993, he assumed responsibility in the thirteen Western United States for coordination of IAM cases before employment relations agencies. This included the presentation of representational and unfair labor practice cases before the National Labor Relations Board, the Federal Labor Relations Authority and state employment relations boards, including PERB. In 1983 and 1984, he served as the Special Assistant to the California Labor Commissioner. His current term expires on December 31, 2004.

### **Legal Advisers**

Appointed as Legal Adviser to Member Alfred K. Whitehead in March 2002, **Laurie Epstein-Terris** earned her B.A. in Economics from the University of Colorado, Boulder, an M.S. in Industrial Relations from the University of Wisconsin, Madison, and her J.D. from the University of California, Davis School of Law. She has been a member of the State Bar since 1984. From 1988 to March 2002, she served as Senior Staff Counsel for the Department of Water Resources and part-time as a Hearing Officer over bid protests for the State Board of Control. In 1987 to mid 1988, she was employed as Staff Counsel with the Department of General Services. While a law student, Ms. Epstein-Terris served as a legal intern for Board Member John Jaeger and in 1986-1987, was employed as legal counsel in PERB's General Counsel's Office.

Appointed as Legal Advisor to Member Theodore G. Neima in May 2002, **Eric Borgerson** received his B.A. in philosophy from Reed College in Portland, Oregon, and his J.D. from Boalt Hall School of Law at U.C. Berkeley. Mr. Borgerson practiced labor and employment law with the law firm (then known as) Van Bourg, Weinberg, Roger and Rosenfeld, and later had his own practice in employment law as well as civil and criminal appeals. He also served for several years as the Assistant Editor for the California Public Employee Relations Program at the Institute of Industrial Relations at U.C. Berkeley, where he wrote extensively on legal developments in public sector labor law and co-authored the *Pocket Guide to the Educational Employment Relations Act*.

Appointed as Legal Adviser to Member Richard T. Baker in February 2003, **Timothy G. Yeung** was previously a Deputy Attorney General with the California Department of Justice where he specialized in employment litigation from 1999 to 2003. From 1996 to 1999, he was a Labor Relations Counsel with the California Department of Personnel Administration. Mr. Yeung earned his B.S. in Business Administration from U.C. Berkeley and his J.D. from U.C. Davis where he served as Senior Research Editor for the U.C. Davis Law Review. Mr. Yeung also currently serves as a member of the City of Davis Personnel Board.

### **Administrators**

Chief Administrative Law Judge **Ron Blubaugh** was first employed as legal counsel for the Educational Employment Relations Board [now PERB] on June 28, 1976; promoted to Administrative Law Judge at PERB in 1986; and was named Chief Administrative Law Judge July 21, 1994. He has taught labor-management relations courses for the University of California, Davis, Extension continuously from 1979 to the present. He received an A.B. in economics from the University of Notre Dame, an M.S. in journalism from Northwestern University, and a J.D. from the University of the Pacific McGeorge School of Law.

PERB General Counsel **Robert Thompson** began working for PERB in 1980 as a Legal Adviser to then Chair Harry Gluck. He has also worked as a Regional Attorney and Deputy General Counsel. He received a Bachelor of Sciences degree in Chemical Engineering from Northwestern University and is a member of the Executive Committee of the Labor and Employment Law Section of the State Bar of California.

**Anita I. Martinez** has been employed with PERB since 1976 and has served as San Francisco Regional Director since 1982. Her duties include supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of settlement conferences, representation hearings, and elections. Before joining PERB in 1976, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, California Public Sector Labor Relations, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her B.A. from the University of San Francisco.

**Les Chisholm** has served as Sacramento Regional Director for PERB since 1987. His duties include investigation of representation cases and unfair practice charges, and conduct of settlement conferences and representation hearings and elections. Mr. Chisholm also has responsibilities in the areas of legislation, rulemaking and computer projects for the Board. He received an M.A. in political science from the University of Iowa.

**Eileen Potter** began working for PERB in 1993 as the Administrative Officer. Her state service includes service in the Governor's Office of Planning and Research (OPR) from 1979 through 1990 culminating in her appointment as the Assistant Chief of Administration. After leaving OPR, Ms. Potter worked at the Office of Statewide Health Planning and Development and the Department of Health Services before coming to PERB as its Administrative Officer. She has a degree in Criminal Justice Administration with minors in Accounting and English from California State University, Sacramento.



## **I. OVERVIEW**

### **A. Statutory Authority and Jurisdiction**

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board administers four collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB prior to July 1, 2001 were: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code sec. 3540, et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code sec. 3512, et seq.), establishing collective bargaining for State Government employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code sec. 3560, et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968, which established collective bargaining for California's municipal, county, and local special district employers and employees. This occurred as a result of Governor Gray Davis' signing of Senate Bill 739, authored by State Senator Hilda Solis (Statutes of 2000, Chapter 901). PERB's jurisdiction over the MMBA excludes peace officers, management employees and the City and County of Los Angeles.

With the passage of SB 739, approximately 1.5 million public sector employees and their employers are included within the jurisdiction of the four Acts administered by PERB. Approximately 675,000 employees work for California's public education system from pre-kindergarten through and including the community college level. Approximately 125,000 employees work for the State of California. The University of California, California State University and the Hastings College of Law employ approximately 100,000. The remainder are employees of California's cities, counties and special districts.

### **B. PERB's Purpose and Duties**

#### **1. The Board**

The Board itself is composed of up to five members appointed by the Governor and subject to confirmation by the State Senate. Board members are appointed to five-year terms, with the term of one member expiring at the end of each calendar year. In addition to the overall responsibility for administering the four statutes, the Board itself acts as an appellate body to hear challenges to proposed decisions that are issued by the staff of the Board. Decisions of the Board itself

may be appealed under certain circumstances, and then only to the state appellate courts. The Board, through its actions and those of its staff, is empowered to:

- Conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- Deal with impasses that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register its opinions regarding the subjects of negotiations between public sector employers and employee organizations;
- Interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- Bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- Conduct research and training programs related to public sector employer-employee relations;
- Take such other action as the Board deems necessary to effectuate the purposes of the Acts that it administers.

During fiscal year 2002-2003, the Board issued 87 decisions. In comparison, the Board issued 67 decisions the previous fiscal year. A summary of the Board's 2002-2003 decisions is included in the Appendix IV-E.

## **2. Major PERB Functions**

The major functions of PERB involve: (1) the administration of the statutory process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (2) the evaluation and adjudication of unfair practice charges; and (3) the legal functions performed by the office of the General Counsel.

**The representation process** normally begins when a petition is filed by an employee organization to represent employees in classifications which reflect an internal and occupational community of interest. In most situations, if only one employee organization petition is filed and the parties agree on the description of the bargaining unit, the employer may either grant voluntary recognition or ask for a representation election. If more than one employee organization is competing for representational rights of the same bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent convenes a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination which sets forth the appropriate bargaining unit, or modification of that unit, based upon application of statutory unit determination criteria and appropriate case law to the facts obtained in the investigation or hearing. Once an initial bargaining unit has been established, PERB conducts a representation election in cases in which the employer has not granted voluntary recognition to an employee organization. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of "No Representation" appears on the ballot in every representation election.

Representation Section staff also assist parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the fact-finding process provided under EERA and HEERA. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. At that time, a Board agent contacts both parties to determine if they have reached a point in their negotiations at which their differences are so substantial or prolonged that further meetings without the assistance of a mediator would be futile. Once PERB has determined that an impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

In the event settlement is not reached during mediation, either party, under EERA and HEERA, may request the implementation of statutory fact-finding procedures. PERB provides lists of neutral factfinders who make findings of fact and advisory recommendations to the parties concerning terms of settlement.

A summary of PERB's representation activity is included later in this report.

**The evaluation and adjudication of unfair practice charges** is another major function performed by PERB. An unfair practice charge may be filed with PERB by an employer, employee organization, or employee, alleging that an employer or employee organization has committed an act which is unlawful under one of the Acts administered by PERB. Examples of unlawful employer conduct are: refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; or failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is evaluated by staff to determine whether a prima facie case of an unlawful action has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, HEERA or MMBA has occurred. If it is determined that the charge fails to state a prima facie case, a Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is afforded time to either amend or withdraw its charge. If the charge is neither amended nor withdrawn, the Board agent dismisses it. The charging party may then appeal the dismissal to the Board itself.

If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent is then given an opportunity to file an answer to the complaint.

Once a complaint has been issued, an Administrative Law Judge (ALJ) or other PERB agent is assigned to the case and calls the parties together for an informal settlement conference, usually within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled, normally within 90 days of the date of the informal conference. The 90 day wait for a formal hearing represents an increase of 30 days from last fiscal year. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party to the case may then file an appeal of the proposed decision to the Board itself. The Board itself may affirm, modify, reverse or remand the proposed decision.

Proposed decisions which are not appealed to the Board itself are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Decisions of the Board itself are both binding on the parties to a particular case and precedential. A digest of PERB decisions is available upon request.

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. It maintains case files, issues decisions rendered and prepares administrative records filed with California appellate courts. This office is the main contact with parties and their representatives while cases are pending before the Board itself.

**The legal representation** function of the Office of the General Counsel includes:

- Defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in state appellate courts;
- Seeking enforcement when a party refuses to comply with a final Board decision, order or ruling, or with a subpoena issued by PERB;
- Seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- Defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- Submitting amicus curiae briefs and other motions, and appearing in cases in which the Board has a special interest or in cases affecting the jurisdiction of the Board.

A summary of the litigation activity of the Office of the General Counsel is included later in this report.

### **3. Other PERB Functions and Activities**

#### **Retention of Collective Bargaining Agreements**

PERB regulations require that most employers file with PERB a copy of all collective bargaining agreements (CBA) reached pursuant to the four Acts PERB administers, within 60 days of the date of execution. These contracts are maintained as public records in PERB's regional offices. Because budgetary reductions have greatly reduced staff resources, PERB has announced proposed regulations to eliminate the mandatory filing of CBAs.

#### **Financial Records**

The law requires recognized or certified employee organizations to file with PERB an annual financial report of income and expenditures. Organizations which have negotiated a fair share fee arrangement for bargaining unit members

have additional filing requirements. Complaints alleging noncompliance with these requirements may be filed with PERB, which may take action to bring the organization into compliance. Because budgetary reductions have greatly reduced staff resources, PERB has announced proposed regulations to eliminate the mandatory filing of financial reports.

### **Advisory Committee**

The Advisory Committee to PERB consists of approximately 100 people from throughout California representing employers, employee organizations, law firms, negotiators, professional consultants, the public and scholars. The Advisory Committee was originally established several years ago to assist the Board in its regulation review process. Currently, the Advisory Committee continues to assist the Board in its search for ways to improve PERB's effectiveness and efficiency in working with public sector employers and employee organizations to promote the resolution of disputes and contribute to greater stability in employer-employee relations.

### **Conference Sponsorship**

The Center for Collaborative Solutions (CCS) is a non-profit foundation dedicated to assisting public education employers and employees in their efforts to improve working relationships, solve problems and provide leadership in the education community. CCS, formerly known as the California Foundation for Improvement of Employer-Employee Relations, began in 1987 as a project within PERB. Each year CCS presents a conference entitled "Public Education: Meeting the Challenge." PERB is joined by the Institute of Industrial Relations at the University of California, Berkeley; the California State Mediation and Conciliation Service; and the Federal Mediation and Conciliation Service in sponsoring the annual conference. The 2002 CFIER conference was held in October in Anaheim, California.

The Association of Labor Relations Agencies (ALRA) is an association of impartial government agencies in the United States and Canada responsible for administering labor-management relations laws or services. Due to budgetary restraints, PERB was unable to participate in the 2003 conference.

### **Information Requests**

As California's expert administrative agency in the area of public sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations and formal decisions. Information requests from the Legislature and the general public are also received and processed. Additionally, PERB cooperates with the Institute of Industrial Relations of the University of California, Berkeley, in the dissemination of information concerning PERB policies and actions to interested parties throughout the State.

### **C. Support Functions and Board Operations**

The **Administration Section** provides support services to PERB, such as business services, personnel, accounting, information technology, mail and duplicating. This section also engages in budget development and maintains liaison with the Department of Finance and other agencies within State Government.

Throughout the past few years, PERB has embraced automation as a means of increasing productivity, allowing it to handle increased workload with reduced staffing. PERB has also moved forward with the full development of its website, allowing those who do business with PERB the ability to access PERB Decisions, on-line forms and the Board's, regulations and statutes.

## **II. LEGISLATION AND RULEMAKING**

### **A. Legislative History of PERB**

The Public Employment Relations Board's (PERB or Board) present involvement in California public sector labor relations can best be seen as a result of an evolutionary legislative process. Highlights are presented herein.

#### The George Brown Act

The George Brown Act of 1960 established a process to determine wage levels for public employees, including State employees. The Act involved the Legislature, the State Personnel Board and non-exclusive employee groups. Each year the State Personnel Board would conduct a study of employee wages and benefits. Using this information, along with input from the employee groups, Legislature and the Governor, a budget item would result reflecting any salary increase for State employees. The Brown Act required the State, as management, to meet and confer with non-exclusive employee organizations to hear their salary requests.

#### The Winton Act

The Winton Act of 1964 withdrew public school and community college employees from the George Brown Act. It granted school employees the right to form, join and participate in the activities of employee organizations and the right to refrain from such activities. It provided for meet and confer but not for exclusive representation. The Winton Act continued plural representation for classified employees and created certificated employee councils for certificated employees. The Winton Act did not provide for an administrative agency. Enforcement of the law was through the courts.

#### Meyers-Milias-Brown Act (MMBA)

The MMBA originally was enacted in 1968 when Senator George Moscone authored SB 1228. SB 1228 was approved by the Legislature on August 1, 1968 as Chapter 1390 of the Statutes of 1968 and was signed by former Governor Ronald Reagan on August 21, 1968. At the time it was written, the law withdrew all employees of local government from the George Brown Act. The MMBA authorized local governments to adopt rules and regulations to provide for administering employer-employee relations. It did not establish exclusive representation by the statute but permitted local government to establish exclusivity through local ordinance. It permitted negotiations of agency shop since 1981. Unfair practice provisions were not in the text of the statute. Local government entities are permitted to adopt reasonable rules establishing election procedures. The MMBA did not exclude management, supervisory or confidential employees.



### Unsuccessful Legislation Leading to EERA

In 1972, Assembly Resolution No. 51 established the Assembly Advisory Council on Public Employee Relations. This blue ribbon panel recommended the enactment of a comprehensive public employment bargaining law for all public employees in California. Several legislative attempts were made to enact this panel's recommendations, each attempt failing to become law.

In 1973, Assembly Speaker Bob Moretti introduced AB 1243, which failed to receive the votes necessary to secure passage. Senator George Moscone introduced SB 400 in 1974, which did not reach the Assembly floor. Senate Bill 1857, authored by Senator Albert Rodda, was debated. Two other unsuccessful efforts were made in 1975, SB 275 (Dills) and AB 119 (Bill Greene and Julian Dixon). Despite these failures, momentum was building which finally led to the enactment of EERA in 1976.

### The Educational Employment Relations Act (EERA)

On January 6, 1975, Senator Albert S. Rodda introduced SB 160, the EERA. Several amendments were made by the author in an attempt to achieve a consensus bill that both employers and employee organizations would support. This measure passed the Legislature on September 8, 1975, and was signed into law as Chapter 961 (Statutes of 1975) by Governor Edmund G. Brown Jr. on September 22, 1975.

The "meet and confer" provision of the Winton Act was strictly limited. Agreements reached under this process could not be incorporated into a written contract, were not binding and could be modified unilaterally by the public school employer.

EERA created the Educational Employment Relations Board (EERB). The EERB was the quasi-judicial agency created to implement, legislate, and settle disputes in, collective negotiations for California's public school employers and employees. The three-member Board assumed its responsibilities in April 1976. The new labor board was given the authority to:

- Determine appropriate bargaining units;
- Conduct representation elections;
- Decide whether or not disputed subjects fall within the scope of representation;
- Appoint fact finders and mediators in impasse situations;
- Investigate and resolve unfair practice charges;
- Bring actions in court to enforce its decisions.

### State Employer-Employee Relations Act (SEERA or Dills Act)

Senate Bill 839, authored by Senator Ralph C. Dills, was passed by the Legislature on September 19, 1977 as Chapter 1159 of the Statutes of 1977. SEERA was signed into law on September 30, 1977 by Governor Brown and became effective July 1, 1978. SEERA extended EERB coverage to State civil service employees. It also renamed EERB as the Public Employment Relations Board (PERB). The powers that had been given to the EERB were conferred on the new PERB.

SEERA contained additional provisions for the exclusive representation by employee organizations, the filing of unfair practice charges and the use of mediation for impasse resolution. SEERA also required the State employer to "meet and confer in good faith." Memoranda of Understandings supersede specified code sections under the provisions of SEERA.

### Higher Education Employer-Employee Relations Act (HEERA)

Assemblyman Howard Berman authored AB 1091, the HEERA, which became law on September 13, 1978. HEERA took effect in July 1979. It covers all employees of the University of California, the California State University and College System, and the Hastings College of Law.

HEERA extends authority similar to that exercised by the Board under EERA and SEERA.

### MMBA Amendments

In 2001, PERB assumed responsibility for administering the MMBA. Thus, nearly 30 years after it first was suggested that a labor board be created to supervise collective bargaining for all public employees in California, that idea has become reality.

PERB was given jurisdiction over the MMBA through the enactment of SB 739 by Senator Hilda L. Solis. Under the revised MMBA, PERB has jurisdiction over labor relations at all levels of local government except for the City of Los Angeles, the County of Los Angeles and all local police departments.

## **B. Rulemaking**

On May 14, 2003, PERB announced the development of a regulations package containing changes to PERB's operational procedures and other changes mandated by statutory amendments to the MMBA. These proposed regulations were submitted to the Office of Administrative Law, after which a public comment period commenced. During the public comment period, all interested parties were invited to submit written comments regarding the proposed regulations. In addition, a public hearing was held on September 11, 2003, during which oral comments were invited by the Board. After consideration of the oral and written comments, the Board adopted the proposed regulations, as set forth in the Notice of Proposed Rulemaking, on September 11, 2003.

### **III. CASE DISPOSITIONS**

#### **A. Unfair Practice Charge Processing**

During the 2002-2003 fiscal year, 802 unfair practice charges were filed with Public Employment Relations Board (PERB or Board). This was a significant increase over the 740 unfair practice charges filed during the 2001-2002 fiscal year. This increase is consistent with the overall increase in work caused by the inclusion of the Meyers-Milias-Brown Act (MMBA) in PERB's jurisdiction. As a comparison, unfair practice charge filings averaged 551 per year in the ten years prior to PERB's assumption of MMBA jurisdiction on July 1, 2001. Since that time, unfair practice charge filings have averaged 771 per year.

#### **B. Dispute Resolutions and Settlements**

As a matter of sound public policy, PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process, the investigation. During this step 264 cases were withdrawn, many through informal resolution by the parties. Of the 332 cases where the investigation resulted in issuance of a complaint, a settlement conference was completed in 291 cases. Staff from the General Counsel's office and the Division of Administrative Law conducted 339 days of settlement conferences, a 55% increase from the 219 days completed the previous fiscal year. These efforts resulted in voluntary settlements in 165 of these cases, or 57%.

PERB's high success rate in mediating voluntary settlements is due to the tremendous skill and efforts of its staff. Of particular note is the work performed by PERB's San Francisco Regional Director who brought together the University of California and the Coalition of University Employees to resolve the vast majority of many cases pending between the parties. As the efforts of PERB's staff demonstrate, voluntary settlements are the most efficient way of resolving disputes as well as providing an opportunity for the parties to improve their relationship. PERB looks forward to continuing this commitment to voluntary dispute resolution and extending this commitment to the MMBA parties recently added to its jurisdiction.

#### **C. Administrative Adjudication**

Complaints that are not resolved through voluntary mediation are sent to the Division of Administrative Law for an evidentiary hearing before an administrative law judge. During this fiscal year, the workload of the Division increased as parties governed by the MMBA grew in their familiarity with the PERB and its processes. Administrative law judges conducted 147 days of hearing compared to 132 days in 2001-2002 and only 98 days in 2000-2001. The administrative law judges wrote 52 proposed decisions compared to 43 in 2001-2002 and 38 in 2000-2001.

The rate of cases scheduled for hearing that actually go to hearing was 52 percent in the 2002-2003 fiscal year. This is the highest yield rate in the last five years and reflects the difficult issues faced by the parties in hard economic times.

#### **D. Board Decisions**

Proposed decisions issued by the Division of Administrative Law are subject to review by the Board itself. During the fiscal year, the Board issued 87 decisions including consideration of 14 requests for injunctive relief. This represents a 34% increase over the 67 decisions issued in 2001-2002.

Although it has been over two years since the addition of the MMBA to PERB's jurisdiction, the process of developing a body of decisional law under the MMBA continues. Because many issues under the MMBA remain unaddressed and unresolved, the Board expects the number of cases filed and appealed to the Board to continue to increase for the next several years.

#### **E. Litigation**

There were a total of 14 new litigation cases opened during 2002-2003, which are summarized in Appendix IV-F. These litigation cases required the filing of over 65 briefs, motions, and pleadings. Nine of these cases closed during the fiscal year, each with a result favorable to PERB.<sup>1</sup> This compares with 11 litigation cases opened during 2001-2002.

#### **F. Representation Activity**

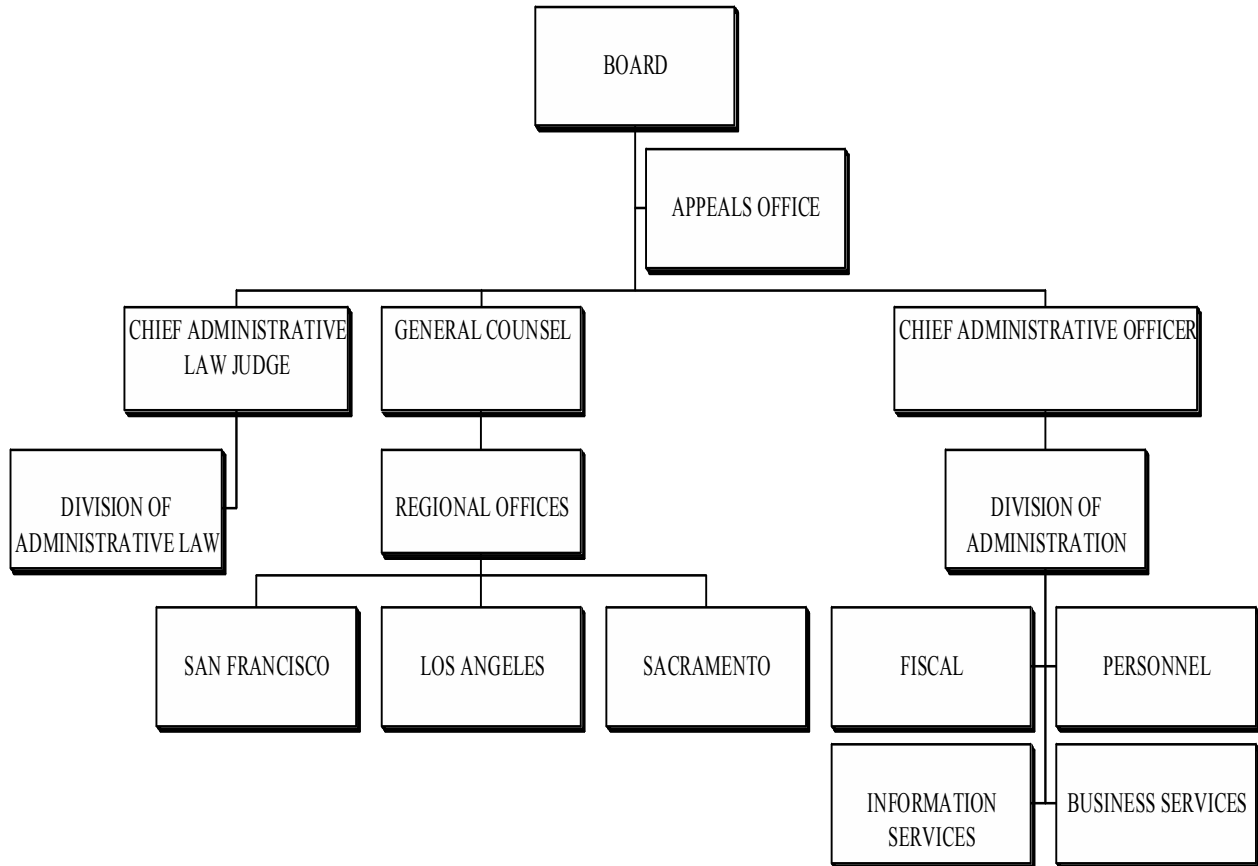
During the fiscal year, PERB conducted 19 elections, the fewest number of elections since the 1997-1998 fiscal year. This compares to 31 elections conducted the prior fiscal year and an average of 36 elections during the five previous fiscal years. Of the elections conducted, 16 occurred as a result of initial representation efforts, with 15 involving parties covered under the Educational Employment Relations Act (EERA) - including three involving charter schools - and 1 involving a University of California unit under the Higher Education Employer-Employee Relations Act (HEERA). PERB also conducted 2 decertification elections and 1 severance election under EERA.

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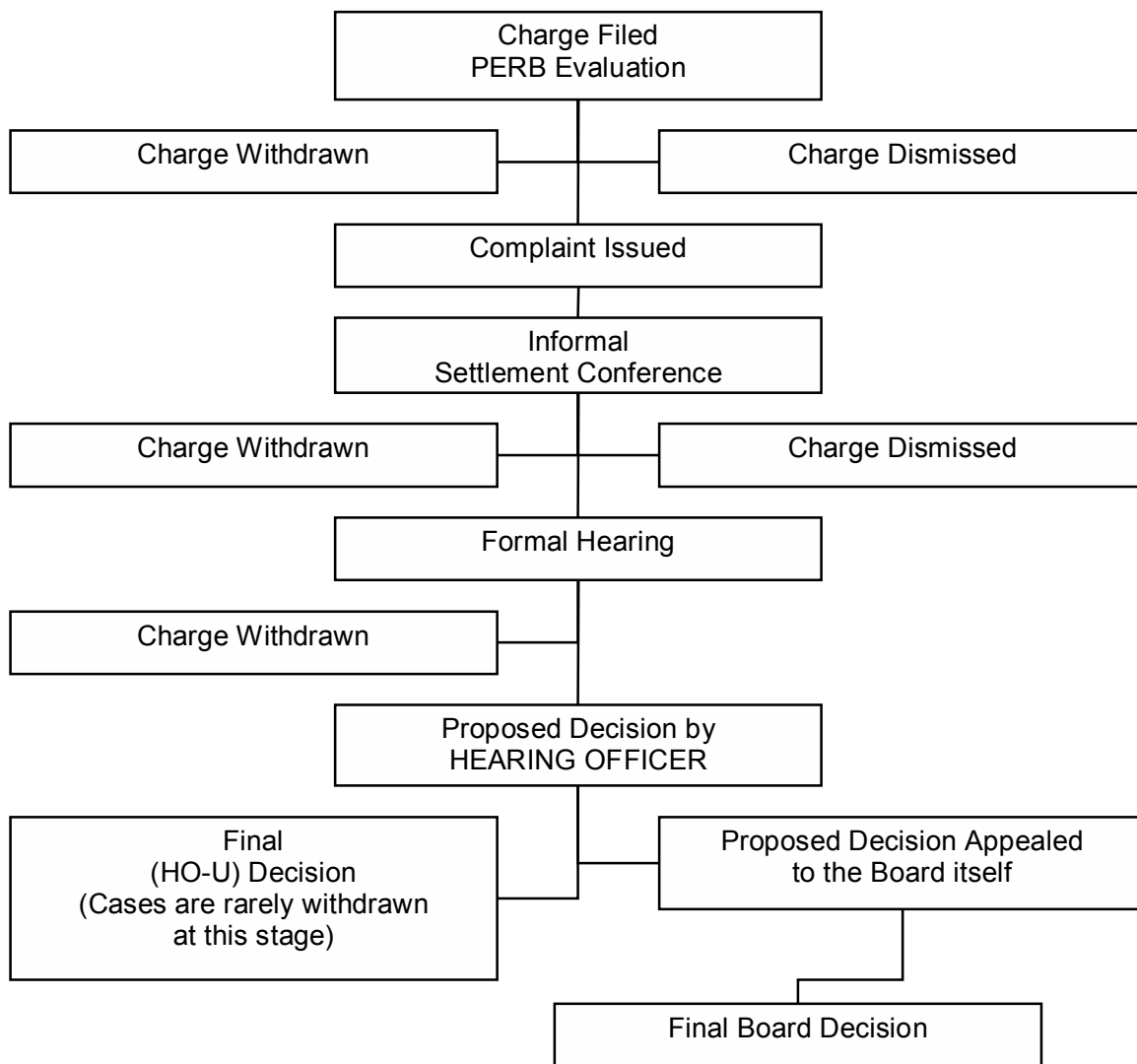
<sup>1</sup> Two of these cases were requests for enforcement and did not result in a court appearance.

## **IV. APPENDICES**

**PUBLIC EMPLOYMENT RELATIONS BOARD  
Organizational Chart**



# UNFAIR PRACTICE CHARGE FLOW CHART





**2002-2003 REPRESENTATION CASE ACTIVITY****I. Case Filings and Disposition Summary**

<b>Case Type</b>	<b>Filed</b>	<b>Closed</b>
Request for Recognition	23	24
Severance	8	5
Petition for Certification	1	0
Decertification	6	4
Amended Certification	2	2
Unit Modification	38	33
Organizational Security	2	1
Petition for Board Review (MMBA)	3	4
Financial Statement	3	2
Public Notice	0	0
Arbitration	0	0
Mediation	164	155
Factfinding	34	29
Compliance	20	15
<b>Totals</b>	<b>304</b>	<b>274</b>

**II. Prior Year Workload Comparison: Cases Filed**

	<b>1999-2000</b>	<b>2000-2001</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>4-Year Average</b>
1 <sup>st</sup> Half	149	183	137	136	151
2 <sup>nd</sup> Half	213	235	236	168	213
Fiscal Year	362	418	373	304	364

**III. Elections Conducted**

Decertification	2
Organizational Security Approval	0
Organizational Security Rescission	0
Representation	16
Severance	1
Unit Modification	0
<b>Total</b>	<b>0</b>

APPENDIX IV-C (Continued)

***Elections Conducted: 7/1/2002 to 6/30/2003***

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Winner</i>	<i>Unit</i>
<i>Decertification</i>		<i>Subtotal:</i>		
		<i>2</i>		
SA-DP-00206-E	COLUMBIA SD-SHASTA	Wall Classified	General Teamsters Local 137	50
SF-DP-00255-E	TAMALPAIS UnHSD	Wall Certificated	Tamalpais Federation of Teachers	244
<i>Representation</i>		<i>Subtotal:</i>		
		<i>16</i>		
LA-RR-01079-E	ROBERT L. MUELLER CHARTER SCHOOL	Wall Certificated	No Representation	42
LA-RR-01080-E	CERRITOS COMMUNITY COLLEGE DISTRICT	Wall Certificated	Cerritos Faculty Federation	1190
LA-RR-01083-E	CHARTER 101 ESD/WIMBLEDON VILLAGE	Wall Classified	CSEA	14
LA-RR-01084-E	MESA UnESD	Wall Classified	Mesa Union Support Team	20
LA-RR-01086-E	SANTA BARBARA COE	Instructional Aides	CSEA & its SBCEO Chapter 817	380
LA-RR-01088-E	PALO VERDE USD	Other Classified	Teamsters Local 542	11
LA-RR-01089-E	CHOICE 2000 ON-LINE SCHOOL	Wall Certificated	On-Line Teachers Association	15
LA-RR-01091-E	KERN HIGH SCHOOL DISTRICT	Other Classified Supervisors	Laborers Local 220	17
SA-RR-01035-E	SALIDA UnSD	Children's Center/Aides	SEIU Local 790	36
SA-RR-01037-E	MADERA USD	Certificated Supervisors	MAT	53
SA-RR-01038-E	SALIDA UnSD	Children's Center	SEIU Local 790	22
SA-RR-01039-E	MONSON-SULTANA JtUnESD	Wall Certificated	Monson-Sultana Assn of Teachers	24
SA-RR-01048-E	LE GRAND UnHSD	Wall Certificated	LeGrand Union HSD TA	31
SA-RR-01049-E	FORESTHILL UnESD	Wall Classified	CSEA	63
SF-RR-00858-H	UNIVERSITY OF CALIFORNIA	Physicians	San Diego House Staff Association	207
SF-RR-00860-E	CINNABAR ESD	Wall Classified	Cinnabar Chapter #809	17

*Wednesday, September 17, 2003*

*Page 1 of 2*

**APPENDIX IV-C (Continued)**

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Winner</i>	<i>Unit</i>
<i>Severance</i>		<i>Subtotal:</i>	<i>1</i>	
LA-SV-00136-E	KERN COUNTY OFFICE OF EDUCATION	Operations, Support Services	Supt of Schools Classified Employees Assn	174
<i>Total</i>	19			

## 2002-2003 UNFAIR PRACTICE CHARGE STATISTICS

### I. Unfair Practice Charges Filed by Office

	1 <sup>st</sup> Half	2 <sup>nd</sup> Half	Total
Sacramento	132	111	243
San Francisco	141	94	235
Los Angeles	<u>160</u>	<u>164</u>	<u>324</u>
<b>Total</b>	433	369	802

### II. Unfair Practice Charge Dispositions by Office

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	88	86	101	275
San Francisco	61	96	98	255
Los Angeles	<u>115</u>	<u>82</u>	<u>133</u>	<u>330</u>
<b>Total</b>	264	264	332	860

### III. Prior Year Workload Comparison: Charges Filed

	1999/2000	2000/2001	2001/2002	2002/2003	4-Year Average
1 <sup>st</sup> Half	247	211	521	433	353
2 <sup>nd</sup> Half	<u>263</u>	<u>250</u>	<u>414</u>	<u>369</u>	<u>324</u>
<b>Total</b>	510	461	935 <sup>2</sup>	802	677

<sup>2</sup> The reported number of filings (935) in 2001-2002 included two mass filings of the same charges by 195 individual employees.

**APPENDIX IV-E**

**2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b><u>DEC. NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
1467a	American Federation of Teachers Guild, California Federation of Teachers, Local 1931	The Board denied the request for reconsideration by the American Federation of Teachers Guild, California Federation of Teachers, Local 1931.	Denied. The Federation failed to establish any prejudicial errors of fact or new evidence.
1479a-S	Jim Hard, Cathy Hackett, Ron Landingham, Marc Bautista, Adrienne Suffin & Walter Rice v. California State Employees Association	CSEA requested reconsideration of the Board's decision in No. 1479. CSEA alleged that the Board misinterpreted CSEA's bylaws, improperly used motive for a finding of "interference," intervened in CSEA's internal union affairs, and inappropriately relied on the SEIU hearing officer's report.	The Board denied reconsideration. CSEA failed to show extraordinary circumstances or prejudicial error of fact, as required by PERB 32410(a).
1488	Gerald Wayne Rax v. Service Employees International Union, Local 790	Rax filed a charge alleging that SEIU, Local 790 failed to file a grievance regarding his termination. The board agent dismissed the charge because it was untimely and failed to state a prima facie case.	The Board affirmed the dismissal of Rax's charge solely on the basis that it was untimely filed.
1489	Graciela Ramirez v. Golden Plains Unified School District	The Board held that Ramirez stated a prima facie case of discrimination against Golden Plains Unified School District in violation of EERA section 3543.5(a), overturning the Board agent's dismissal.	The unfair practice charge is remanded to the Office of the General Counsel.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1490	Turlock Teachers Association v. Turlock Joint Elementary School District	The Board reversed an ALJ proposed decision holding that the school district could prohibit teachers from wearing buttons expressing opinion on subject related to collective bargaining. ALJ reasoned that District's authority to regulate "political activities" under Education Code section 7055 encompassed the buttons because dictionary definition of "political" is "of or relating to government" which includes public sector labor bargaining. Charge alleged the District violated EERA section 3543.5(a) and (b) by interfering with teachers' protected rights when it prohibited them from wearing such buttons in the classroom.	Reversing the ALJ, the Board held that teachers have an EERA-protected right to wear buttons at school site and in classroom expressing opinions on subjects related to collective bargaining. District's authority to regulate "political activities" under Education Code section 7055 does not authorize ban on such buttons. Such a broad definition of "political" would allow suppression of the very speech necessary to effectuate the purposes of EERA. Ruling fosters statutory goal of promoting stable labor relations by encouraging open communication between employer, employee organization, and employees. Ban violated EERA section 3543.5(a) and (b).
1491-S	International Union of Operating Engineers v. State of California (State Personnel Board)	IUOE alleged that SPB failed to approve settlement agreements for employees who participated in MOU-based alternative disciplinary review procedures in violation of the Dills Act. SPB file a motion to dismiss. Without hearing, the ALJ granted the motion on the basis that the SPB is not a "state employer" under the Dills Act.	The Board remanded the case for hearing on the merits, and ordered joinder of the Department of Personnel Administration as a party.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1491a-S	International Union of Operating Engineers v. State of California (State Personnel Board)	SPB requests a stay of the Board's decision in No. 1491-S pending decisions by the Court of Appeal regarding allegedly similar issues. SPB also requests reconsideration, asserting that the Board's decision in No. 1491 contains prejudicial errors of law and fact.	The Board denied the State Personnel Board's request for stay of proceedings and/or reconsideration.
1492	Michael Waymire v. Monterey Peninsula Community College District	Waymire lacked standing to invoke the protection of EERA since he is not a public school employee under EERA section 3540.1(j), because he had not provided services to the District or on the District's premises, had not received compensation from the District, and had not been under the supervision of the District's management for several years.	The Board dismissed the charge for lack of jurisdiction because Waymire is not a "public school employee" under EERA section 3540.1(j).
1493	Michael Waymire v. California School Employees Association & its Chapter 245	Waymire lacked standing to invoke the protection of EERA since he is not a public school employee under EERA section 3540.1(j) because he had not provided services to the District or on the District's premises, had not received compensation from the District, and had not been under the supervision of the District's management for several years.	The Board dismissed the charge for lack of jurisdiction because Waymire is not a "public school employee" under EERA section 3540.1(j).

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1494	Edward Ruben Torres v. Oxnard Federation of Teachers	The charge alleged that the Federation breached its duty of fair representation by failing to intercede with the District on Torres' behalf regarding alleged unfair treatment by his supervisors and the District's subsequent termination of his employment. The Board dismissed the charge because: (1) the Federation did not owe a duty to represent Torres in non-contractual administrative matters or judicial actions, and (2) the Federation may refuse to pursue a grievance if it makes an honest and reasonable determination that the grievance lacks merit.	The Board dismissed the unfair practice charge for failure to state a prima facie case. The Federation's failure to pursue a grievance when based upon an honest and reasonable determination that the grievance lacks merit is not arbitrary.
1495	Santa Ana Educators Association v. Santa Ana Unified School District	The charge did not state the "who, what, when, where, and how" of an unfair practice and mere legal conclusions alone are insufficient to state a prima facie case. In a unilateral change case, the charging party must describe the new and old policies.	The Board dismissed the unfair practice charge for failure to provide a clear and concise statement of the facts.
1496	California Correctional Peace Officers Association v. State of California (Department of Corrections)	The withdrawal of exceptions pursuant to a settlement agreement is in the best interests of the parties and is consistent with the purposes of the Dills Act.	The Board granted the State's request to withdraw exceptions.



**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1497	Carlos A. Veltruski v. State of California (Department of Motor Vehicles, Unemployment Insurance Appeals Board, State Personnel Board & Department of Justice	The Board dismissed the unfair practice charge. The charge alleged that various departments of the State of California violated the Ralph C. Dills Act by denying the charging party employment because of his protected conduct.	Dismissed. Charging party failed to establish a prima facie case of discrimination.
1498	Diane M. Kaiser v. California Teachers Association	The Board dismissed the unfair practice charge. The charge alleged the California Teachers Association violated the EERA by breaching its duty of fair representation.	Dismissed. The California Teachers Association is not the exclusive representative and therefore does not owe charging party a duty of fair representation.
1499	Newark Teachers Association, CTA/NEA v. Newark Unified School District	The Association initially appealed the partial dismissal of its charge, then requested to withdraw the appeal.	Charge withdrawn with prejudice. The Board found that withdrawal was in the parties' best interests and was consistent with the purposes of EERA.
1500-S	Carlos A. Veltruski v. State of California (State Personnel Board, Department of Motor Vehicles, Department of Industrial Relations and Unemployment Insurance Appeals Board)	The Board rejected the charging party's allegation that he was denied a "promotion", consideration as a state employee, and access to various official forms in retaliation for protected activity.	Dismissal affirmed. The allegations were untimely. The Board rejected the charging party's argument that the three-year statute of limitations from the Meyers-Milias-Brown Act should apply, as this was a Dills Act case. The Board also found good cause lacking to allow submission of additional documents on appeal.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1501	Los Angeles School Peace Officers Association v. Los Angeles Unified School District	The Board found that the District violated EERA by unilaterally changing its past practice on use of District-owned vehicles without providing union an opportunity to bargain. There was a dissent.	Violation found. The District's past practice was unequivocal, clearly enunciated and acted upon and readily ascertainable for a reasonable period of time. The Association did not waive its right to bargain. Accordingly, the District violated EERA by unilaterally rescinding its practice.
1502	Sharon D. Ferreira v. Sacramento City Unified School District	The Board affirmed dismissal of the charge, which alleged discrimination on the basis of protected activity.	Dismissal affirmed. The Board adopted the Board agent's warning and dismissal letters which dismissed the charge as untimely and for failure to state a prima facie case.
1503	Sharon D. Ferreira v. Sacramento City Teachers Association	The Board affirmed dismissal of the charge, which alleged violation of the Association's duty of fair representation.	Dismissal affirmed. The Board adopted the Board agent's warning and dismissal letters which dismissed the charge as untimely and for failure to state a prima facie case.
1504	California School Employees Association-Chapter 250 v. Clovis Unified School District	The District's failure to notify CSEA of an election regarding retirement benefits and of the decision to implement the results constitutes interference with CSEA's right to represent unit employees in violation of EERA section 3543.5(b). District's actions also constitute an unlawful unilateral change since the District published its intent to take action on the election results.	The Board held that the District violated EERA when it unilaterally conducted an election for unit employees regarding retirement benefits.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1505	Mendocino County Office of Education v. Mendocino County Federation of School Employees	The Hearing Officer determined the “employee” status of five classified employees on the MCOE’s petition to have them withdrawn from the bargaining unit as “confidential” employees. MCOE excepted to the Hearing Officer’s finding that there was insufficient evidence to find the four clerical employees to have “confidential” status.	The Board adopted the Hearing Officer’s proposed decision and found that the Fringe Benefits Technician, Business Services Division, but not the four clerical positions, met the requirements for confidential employee status.
1506	Part-Time Faculty United, AFT v. Santa Clarita Community College District (College of the Canyons); Lyn Charles “Chuck” Whitten v. College of the Canyons Faculty Association; Beverly Joann Cope v. College of the Canyons Faculty Association	Board reversed ALJ determination. ALJ found no EERA violation in the formation of a unit modification agreement between the District and the Association representing full-time faculty to expand the unit to include part-time faculty when the District was on actual notice that the part-time faculty were organizing and were seeking representation by a competing employee organization.	Reversed. The Board found that the District violated EERA Section 3543.5(d) by contributing support to one employee organization over another and encouraging employees to join one employee organization over another when it entered the unit modification agreement at a time when it was on actual notice that the part-time employees were seeking representation from a different employee organization. Petition for Writ of Extraordinary Relief denied 6-5-03, Court of Appeal, Second District, Case No. B164811.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1507-H	Academic Professionals of California v. Trustees of the California State University	APC alleged that CSU unilaterally changed computer and telephone/facsimile usage policies at its campuses without providing APC notice and an opportunity to bargain. The ALJ found that CSU violated HEERA by modifying the computer usage policies but dismissed the charge involving the telephone/facsimile usage policies.	The Board adopted the portion of the ALJ's proposed decision regarding the computer usage process but reversed the ALJ regarding the change in telephone/facsimile usage policies, finding that CSU violated HEERA section 3571(c).
1508	California School Employees Association v. San Marcos Unified School District	The Board partially reversed an ALJ determination. The ALJ found that the District did not violate EERA when it threatened to discipline teachers, and remove their collective bargaining rights for engaging in labor-related, non-disruptive informational picketing outside a school board meeting. The ALJ reasoned that language in the collective bargaining agreement waiving the right to engage in "picketing...or other interference with district operations" waived any rights to any form of picketing, including the conduct at issue in this case. The ALJ found that the District did violate EERA section 3543.5(a) when it threatened to suspend dues deductions, but that the same conduct did not violate section 3543.5(b).	Reversed in part: The Board found that the right to engage in non-disruptive informational picketing is protected activity under EERA and that inclusion of the word "picketing" in the contract language, ex-amined alone and in textual and historical context, did not constitute a clear and unmistakable waiver of this fundamental right. Based on that determination, the Board held that the District's conduct violated EERA section 3543.5(a), (b), and (c) by interfering with employees exercise of EERA-protected rights, threatening to impose reprisals for protected activity, and unilaterally changing the grounds for employee discipline. The Board affirmed the ALJ's finding that the District violated section 3543.5(a) by threatening to cease dues deductions and, reversing the ALJ, found that the same conduct violated section 3543.5(b).

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1509	California Nurses Association v. Antelope Valley Health Care District	The District sought to withdraw its exceptions to the ALJ's proposed decision. California Nurses Association concurred with the proposed decision and did not oppose the request.	The Board found no prejudice to the opposing party in the District's request and consequently granted the District's request.
1510	Burlingame Elementary School District v. California School Employees Association	The Board dismissed the District's unfair practice charge, which alleged that the Association committed an unfair practice by representing a confidential employee.	Dismissed. The essence of the charge is a dispute over the composition of a unit. In disputed cases, a unit modification can only be accomplished through PERB's unit modification procedure. Charging party cannot circumvent this process by bringing an unfair practice charge.
1511	Marilee DeLauer v. Santa Rosa Junior College	The Board affirmed dismissal and partially adopted a Board agent's warning and dismissal letters. The charge alleged that the College, where charging party was a student, discriminated against her. The Board agent dismissed the charge as untimely and for failure to state a prima facie case and addressed the merits of the charge allegations.	The Board affirmed dismissal and adopted the warning and dismissal letters, except for the portion discussing the merits of the charge allegations. The Board rejected charging party's request to submit new evidence on appeal because good cause was not shown.
1512	Naoia Fanene v. Oakland Unified School District	The Board dismissed the unfair practice charge, which alleged that charging party was discharged for protected activity.	Dismissed. Charging party failed to establish a nexus between the protected activity and the adverse action. Amended charge was not considered because it was not served on opposing party.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1513	Naoia Fanene v. Service Employees International Union, Local 790	The Board dismissed the unfair practice charge, which alleged that union violated its duty of fair representation	Dismissed. No evidence that union's decision not to represent employee at termination hearing was arbitrary, discriminatory, or in bad faith. Amended charge was not considered because it was not served on opposing party.
1514	State Employees Trades Council v. Trustees of the California State University	The Board accepted the parties' joint requests to withdraw exceptions, withdraw the charge, dismiss the complaint, and withdraw an ALJ decision which had found the University violated HEERA by failing to provide timely and relevant information, threatening a SETC member, and separating seven temporary employees from employment.	The Board ordered the charge withdrawn with prejudice, the complaint dismissed with prejudice, and the ALJ decision vacated. The Board found that granting the requests was consistent with the purposes of HEERA and in the best interests of the parties as they had settled their dispute and jointly submitted the requests.
1515	Annette (Barudoni) Deglow v. Los Rios College Federation of Teachers, Local 2279	The Board dismissed the unfair practice charge for failure to state a prima facie case and ordered the charging party to cease and desist from filing similar charges based on the same subject matter. Deglow alleged that the Federation failed to grieve a reference in a letter written by the District in 2000 to a 1994 needs improvement performance evaluation. The reference allegedly provided support for reassignment of Deglow's classes in 1998. The real crux of this matter is the Federation's failure to grieve the 1998 reassignment, issues subject of a previous 1998 grievance and UPC in August 1999. The 1998 charge was dismissed.	The charge was dismissed. As this charge poses the same issues previously addressed and dismissed by the Board and Deglow has been warned by the Board in the past about frivolous charges, the Board advised her to cease filing frivolous charges and that future filings of this kind would result in sanctions.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1516-S	Professional Engineers in California Government v. State of California (Department of Personnel Administration)	PEGG alleged that DPA's director made two statements to the press disavowing a tentative agreement on contracting out issues in violation of the parties' ground rules. PEGG also alleged that the Department of Finance's May 2002 budget revision for Caltrans' capital outlay budget had the same effect. PEGG further contends that these all comprised a per se violation of Dills Act Section 3519(c).	The Board dismissed the charge. Using a totality of circumstances test, the Board agent found that the state did not violate the Dills Act in breaching the parties' ground rules by its alleged failure to support the parties' tentative agreement.
1517-H	Sharon Buxton v. Coalition of University Employees	Buxton alleged that the University laid her off out of seniority and asked CUE to grieve the issue. She alleges that CUE did not adequately represent her in her grievance and failed to inform her of the results of that grievance in a timely fashion.	The Board dismissed the charge. The Board found the charge to be timely but that Buxton failed to state a prima facie case for breach of a duty of fair representation.
1518	Compton Education Association v. Compton Unified School District	The Board found that the District violated EERA by threatening participants in a union meeting and by retaliating against organizers of meeting.	Violation found. Employer unlawfully interfered with the exercise of protected activity by demanding that an employee reveal who called a union meeting and then removing the employee from her position when she failed to comply.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1519-H	Janie Ann Enter v. Regents of the University of California (Los Alamos National Laboratory)	Enter alleges that LANL denied her the right to a representative of her choice at a disciplinary meeting and tampered with a fact-finder's synopsis of a grievance she filed with LANL.	The Board dismissed the charge for failure to state a prima facie case of interference with an employee's rights and for failure to satisfy the six-month statute of limitations. The Board affirmed the Board agent's dismissal of the charge regarding representation, finding Enter had no standing to allege a unilateral change and that Enter failed to state a prima facie case of interference. However, the Board found the tampering allegation to be untimely and did not adopt the Board agent's discussion of the merits of that allegation.
1520	Paul Pitner v. Contra Costa Community College District	The Board reversed the dismissal of the unfair practice charge, which alleged that the District discriminated against charging party for protected activity.	Reversed. Direct evidence of discrimination sufficient to establish required nexus. Complaint ordered issued.
1521	Willits Teachers Association, CTA/NEA v. Willits Unified School District	The Board dismissed charge which alleged that arbitrator's award was repugnant to EERA.	Dismissed. Arbitrator's decision finding language of the contract ambiguous and relying instead upon past practice was not "palpably wrong," and therefore not repugnant to EERA.



**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1522	Marilee L. DeLauer v. Sonoma Valley Unified School District	The Board affirmed dismissal of the unfair practice charge, which alleged that the District, through various conduct, retaliated against her for protected activity. The Board agent found that Delauer's prior PERB charges against her union and the community college she attended were protected activity, but that she failed to demonstrate adverse action by the district or nexus to protected activity.	Dismissal affirmed. No good cause to accept additional documents and allegations on appeal.
1523	Marileen (Mimi) DeLauer v. California School Employees Association	The Board affirmed dismissal of a charge which alleged that the Association violated its duty of fair representation by failing to assist DeLauer in obtaining a leave of absence, assist in recovering her position after she resigned, provide her with various forms, and assist her in remedying a hostile environment at the junior college she was attending. The Board agent dismissed the charge for failure to state a prima facie case.	Dismissal affirmed. No good cause for new evidence on appeal. Warning and dismissal letters adopted. Union owed no duty to provide workers compensation forms.
1524-M	Union of America Physicians & Dentists v. County of San Joaquin (Health Care Services)	The Board found that that the County violated MMBA by retaliating against employee who was union organizer. Appeal pending.	Violation found. Evidence established that employee would not have been issued a plan of corrective action but for his protected activities.

**APPENDIX IV-E (continued)**

**2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1525	District Educators Association, CTA/NEA v. Huntington Beach Union High School District	The Board found that the District violated EERA by unilaterally modifying the hours of employment of three new positions in an existing classification.	Violation found. A change in the hours of employment of vacant positions is a matter within the scope of representation. This remains true even where the change is prompted by an employer's decision to alter its nature, direction, or level of service. To the extent that the Board's prior decisions in <u>Arcata Elementary School District</u> (1996) PERB Decision No. 1163, <u>East Side Union High School District</u> (1999) PERB Decision No. 1353, <u>Antelope Valley Union High School District</u> (2000) PERB Decision No. 1402, hold otherwise, they are overruled.
1526-S	California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC v. State of California (Department of Youth Authority)	The Board dismissed the unfair practice charge, which alleged that the State of California failed to bargain over a decision and impact of changes in teacher assignments.	Dismissed. Board does not have jurisdiction to enforce settlement agreements or arbitration decisions unless the alleged violation also constitutes an unfair practice.
1527-S	California State Employees Association, Local 1000, SEIU, AFL-CIO, CLA v. State of California (Department of Youth Authority)	The Board dismissed the unfair practice charge, which alleged that the State of California failed to bargain over a decision to send teaching staff into living units and engaged in surface bargaining over the impact of the decision.	Dismissed. Charge must be deferred to arbitration. Union failed to present evidence of enmity by employer which would warrant refusal by Board to defer charge to arbitration.

**APPENDIX IV-E (continued)**

**2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1528	Kathleen M. Turney v. Fremont Unified School District	The Board dismissed District's exceptions to a decision in which District prevailed.	Exceptions Dismissed. Board is not required to correct harmless errors in a nonprecedential ALJ decision. Absent good cause, Board will dismiss as without merit any initial exceptions filed by a prevailing party unless the Board's ruling on the exceptions would change the outcome of the ALJ decision.
1529	Oakland Education Association v. Oakland Unified School District	OEA alleged that the District discriminated and retaliated against Robinson for his protected conduct. The Board agent found no nexus between Robinson's protected conduct and the District's decision to place him on administrative leave. The District's act was allegedly related to two letters of complaint about Robinson. OEA requested copies of the letters but was unable to obtain them from the district or the Board agent.	The Board found sufficient nexus to establish a prima facie case. The letters constituted the District's affirmative defense and should not have been the basis for the partial dismissal. The Board remanded the case for issuance of an amended complaint.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1530-S	Lee M. Moore v. California Correctional Peace Officer's Association	The charge alleged that the union refused to bargain with Moore, a supervisor, allowed a supervisory employee to represent non-supervisory employees, and threatened reprisals against the Moore for challenging the union's conduct.	The Board dismissed the charge. The charge alleged a violation of the Bill of Rights for State Excluded Employees, not the Dills Act. PERB has no jurisdiction over the EERB and the charging party, as a supervisory employee, does not have standing to file the charge. A Union representative's failure to discuss complaints about an employee with the employee does not state a prima facie violation of the Dills Act because the union's duty to bargain is owed to the state, not to employees.
1531-M	Mark Siroky v. City of Folsom	Siroky alleged that the City failed to sign a settlement based upon a proposed arbitration award that awarded Siroky \$5000 for working out of class. He claims that the City's refusal to sign is due to his union activity.	The Board dismissed the charge because it was not timely filed. Siroky knew as early as September 1998 of the City's refusal to sign the agreement. His charge was filed on January 25, 2002, well beyond the three year limitations period.
1532	United Teachers of Los Angeles v. Los Angeles Unified School District	The Board reversed the Board agent's dismissal of charge alleging retaliation.	Reversed. District's vague and inadequate explanations for refusing to re-hire employee who had satisfactory performance evaluations constitute circumstantial evidence that District was motivated by anti-union animus. Sufficient nexus is established. Complaint ordered issued.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1533	John Rossmann v. Orange Unified Education Association & California Teachers Association	The Board dismissed the unfair practice charge, which alleged that union violated its duty of fair representation.	Dismissed. Union did not violate duty of fair representation by agreeing to bargain over retirement benefits for current employees since such benefits are a permissive subject of bargaining. Mere fact that employee was not satisfied with the contract provision negotiated by union does not establish a breach of the duty of fair representation.
1534	California School Employees Association & Its Chapter 244 v. Colton Joint Unified School District	The Board dismissed the unfair practice charge, which alleged the District discriminated against employee for protected activity.	Dismissed. No nexus established between protected activity and adverse action where alleged adverse action occurred prior in time to protected activity.
1535-M	Heikoti A. Tupou v. Sacramento Municipal Utility District	The Board dismissed the unfair practice charge, which alleged discrimination for protected activity.	Dismissed. Charge dismissed as untimely where discrimination allegedly occurred almost six years prior to the filing of the charge.
1536-M	Heikoti A. Tupou v. International Brotherhood of Electrical Workers, Local 1245	The Board dismissed the unfair practice charge, which alleged union violated duty of fair representation.	Dismissed. Charge dismissed as untimely where duty of fair representation was allegedly violated almost six years prior to the filing of the charge.

**APPENDIX IV-E (continued)**

**2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1537	Edward Davidson v. Public Employees Union, Local #1	The Board affirmed dismissal of the charge which alleged the Union violated its duty of fair representation by failing to adequately represent charging party at a personnel commission appeal, file a grievance, and assist him in other ways regarding his termination. The Board agent found that the allegations were untimely and failed to state a prima facie case.	Dismissal affirmed. No right to union representation at personnel commission proceeding. No other showing that union's conduct was arbitrary, discriminatory, or undertaken in bad faith. No good cause for new evidence or allegations on appeal.
1538	Berkeley Federation of Teachers #1078 v. Berkeley Unified School District	The Board reversed the Board agent's dismissal of unfair practice charge, which alleged retaliation for protected activity. Case remanded for further processing.	Reversed and remanded for further processing. District's statement that it took the alleged adverse action, "because the Union had filed a grievance . . ." provides a direct link between the filing of the grievance and the alleged adverse action. Thus, charging party has established the requisite "nexus" in order to establish a prima facie case.
1539-M	Mark Siroky v. City of Folsom	Siroky alleged that the City is retaliating against him by attempting to collect a judgment for attorney's fees soon after Siroky filed an unfair practice charge against the City.	The Board dismissed the charge. Siroky's unfair practice charge arises out of the City's failure to sign a proposed settlement agreement in 1998. Siroky had fulfilled his part of the agreement to abandon his appeal of a court-ordered attorney fee award and to resign. There was no evidence that the settlement agreement was executed. Siroky does not qualify as "public employee" under the MMBA under the circumstances in this case. Even if he were, he failed to state a prima facie case.

**APPENDIX IV-E (continued)**

**2002-2003 DECISIONS OF THE BOARD  
BOARD DECISIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1540	Jesse Vickers v. State of California (Department of Corrections)	Vickers alleged that the State discriminated against him because of his activities as a job steward and for filing grievances. The Board agent deferred the charge because it met the <u>Dry Creek</u> standards.	The Board adopted the Board agent's dismissal and deferral to arbitration.
1541-M	John David Irish v. City of Sacramento	The Board reversed the Board agent's dismissal of the unfair practice charge. Case remanded for further processing.	Reversed and remanded. Board found good cause to excuse late filing of amended charge where charging party made a conscientious attempt to timely file amended charge, provided a proof of service signed under penalty of perjury, and was not informed whether or not PERB Regulation 32135 would apply.
1542-M	John David Irish v. IUOE Local 39	The Board reversed the Board agent's dismissal of the unfair practice charge. Case remanded for further processing.	Reversed and remanded. Board found good cause to excuse late filing of amended charge where charging party made a conscientious attempt to timely file amended charge, provided a proof of service signed under penalty of perjury, and was not informed whether or not PERB Regulation 32135 would apply.

**2002-2003 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
Ad-316	City of Antioch and American Federation of State, County and Municipal Employees, Local 2575 and Public Employees Union, Local One	The Board permitted the withdrawal of an Appeal of Denial of Petition for Board Review.	Granted. No objections filed to request to withdraw appeal.
Ad-317	Part-Time Faculty, American Federation of Teachers v. Victor Valley Community College District/Victor Valley College Faculty Association, CTA/NEA (Intervenor)	Board denied Federation's request to transfer case to Board itself.	Denied. Board declined to exercise its discretion to transfer case to itself. Board held that interests of EERA best served by proceeding through normal case processing procedures.
Ad-318	Lawanda Bailey v. Los Angeles Unified School District	Bailey requests the Board to excuse the late filing of the appeal of the dismissal of her charge. She claims confusion regarding timeliness and the mailing procedure arose out of a conversation with Board staff. At the time, of the conversation, she was not represented by counsel.	The Board excused Bailey's late-filed appeal, finding good cause to excuse the late filing and that the late filing was due to honest error.



**APPENDIX IV-E (continued)**

**2002-2003 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
Ad-319	Angeles Camp Educators Association, CTA/NEA v. Mark Twain Union Elementary School District	Board granted request to accept late-filed exceptions.	Granted. District established that exceptions were inadvertently post-marked one-day later than the actual date of mailing.
Ad-320	Robert L. Mueller Charter School and Mueller Charter School Teachers Association, CTA/NEA	MCSTA requested representation of all certificated employees at Mueller. Mueller objected that EERA conflicted with its charter and the Charter Schools Act and therefore, that any unit was inappropriate. The primary basis of conflict involved Mueller's governing council, the majority of which was comprised of certificated employers who are selected annually.	The Board ordered the election in a unit comprised of all certificated employees, finding the unit appropriate under <u>Franklin-McKinley S.D. #108</u> . The Board however did not determine the propriety of including certificated council members in the unit.

**APPENDIX IV-E (continued)****2002-2003 DECISIONS OF THE BOARD****ADMINISTRATIVE DETERMINATIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
Ad-321	International Brotherhood of Electrical Workers, Local 47 v. City of Anaheim	The Board affirmed the Board Agent's interlocutory order denying the City's motion to dismiss the complaint as untimely on grounds that it was based on conduct occurring more than six months prior to filing of the charge . The Board agent found that a three-year statute of limitations applies to MMBA cases and that PERB has jurisdiction over cases based on conduct occurring prior to transfer of MMBA jurisdiction to PERB on July 1, 2001. The Board agent issued a complaint and joined the City's interlocutory appeal to the Board, wherein the City argued the complaint should be dismissed on grounds of untimeliness, failure to exhaust contractual remedies, laches, and failure to state a prima facie case.	Affirmed. PERB is statutorily required to administer MMBA in conformity with judicial interpretations courts have applied a three-year limitations period to MMBA claims; transfer of jurisdiction to PERB was change in forum, not change in rights or obligations of affected parties, so PERB's exercise of jurisdiction over cases based on conduct occurring prior to July 1, 2001, is not retroactive change to statute; other PERB-administered statutes contain express six-month limitations period while MMBA does not; PERB cannot impute Legislative intent to retroactively repeal settled, substantive statutory rights through statutory silence. Board also ruled MMBA does not require exhaustion of contractual remedies before filing charge; laches defense rejected. Case remanded for further processing. Petition for Writ of Mandate denied 6-11-03, Court of Appeal, Second District, Case No. B164811. Petition for Writ of Mandate denied 6-26-03; Orange County Superior Court, Case No. 03CC01047.

2002-2003 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS

DEC. NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-322	Laura Hogan Larkins v. Chula Vista Elementary EA, CTA	Board affirmed Board agent's refusal to disqualify herself. Charging party requested disqualification based on concerns regarding the Board agent's handling of two other of charging party's cases, Board agent's issuance of complaints against and on behalf of the same parties in different proceedings; and her belief that Board agent had developed "positive working relationship" with respondent's lawyer.	Affirmed. Charging party failed to demonstrate it was "probable that a fair and impartial hearing or investigation" would not be afforded by the Board agent. Board agent correctly explained that charging party's material allegations would be taken as true during prima facie case determination process. Charging party provided no reason to believe Board agent would incorrectly handle case.
Ad-323-M	City of Carson and American Federation of State, County and Municipal Employees, Local 809, AFL-CIO	The City requested a stay of a Board agent's administrative determination ordering a Public Information Specialist to be returned to the former unit pending determination of the City's appeal.	The Board stayed the Board Agent's decision since it affects only one employee and prevents a loss of salary and benefits pending a decision of an appeal. In addition, if the Board reverses the Board agent's holding, implementation of the Board agent's order becomes moot.
Ad-324	Fontana Unified School District and United Steelworkers of America	The Steelworkers' response to the District's exceptions contained a defective proof of service. The Steelworkers appeal an administrative determination rejecting its response.	The Board accepted the Steelworkers' response. In this case the District received actual notice of the filing and there was no showing of prejudice to the District. The Board consequently excused the defective filing.

**2002-2003 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
Ad-325	Linda Lou Kestin v. United Teachers of Los Angeles	Board rejected charging party's request to excuse her five-month-late appeal, which she based on claim that the dismissal letter was "lost in the mail."	Request to excuse late filing denied. Board will excuse late filing where non-prejudicial delay of short duration resulted from circumstances beyond the control of the filing party or from excusable misinformation and where the filing party's explanation was either credible on its face or was corroborated by other facts or testimony. Proof of service established presumption that dismissal letter was properly served on charging party. Charging party's unsworn, unexplained statement that dismissal letter was "lost in the mail" was uncorroborated and insufficient to overcome presumption of proper service. Board's finding supported by all the circumstances of the case. No good cause for late filing; motion denied and appeal rejected as untimely.

**2002-2003 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
Ad-326-S	Cessaly Denise Hutchinson v. State of California (Department of Transportation)	Hutchinson filed exceptions to an ALJ's proposed decision dismissing her charge four months after she was served with the proposed decision. An administrative determination rejected her appeal because of untimeliness. Hutchinson did not appeal the administrative determination. Eight months after the admin. determination was issued, Hutchinson again filed exceptions to the proposed decision, citing new evidence. Again, her exceptions were rejected. She requested that the Board accept her late filing.	The Board denied Hutchinson's request, finding no good cause to accept the late filing. Hutchinson did not provide adequate justification for her request. What was provided lacked any relevance to her case.
Ad-327-M	City of Carson and American Federation of State, County and Municipal Employees, Local 809, AFL-CIO	AFSCME alleges that the City violated its local rules in granting the Professional Association's unit modification petition to remove the Public Information Specialist from the middle management unit to the professional employees' unit, represented by the Association.	The Board found that the City violated its local rules in granting the petition because in applying its local rules, it used the open period for the petitioning organization as the time period for granting the petition, and not the open period for the incumbent organization. Citing NLRB precedent the Board found that the City defacto extended the principles of the contract bar doctrine to unit mod. petitions in its local rules and therefore must adhere to that doctrine.

2002-2003 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

DEC. NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 444	California State Employee Association v. State of California (Department of Youth Authority)	CSEA seeks to enjoin the State from unilaterally imposing the requirement that educational staff perform work duties in locked cell blocks at a Youth Authority maximum security facility.	Request Withdrawn.
I.R. 445	Service Employees International Union, Local 399 v. Moreno Valley Community Hospital.	SEIU sought to enjoin the Health Care System from obstructing and interfering with the SEIU's organizing campaign and petition for recognition process.	Request Withdrawn.
I.R. 446	California Attorneys, Administrative Law Judges & Hearing Officers in State Employment (CASE) v. California Unemployment Insurance Appeals Board	CASE sought an injunction requiring the State to restore workload levels to the pre-July 24, 2002 level and compelling it to meet and confer with CASE over the workload standards.	Request Denied.
I.R. 447	Service Employees International Local 415 v. County of Santa Cruz	SEIU sought to enjoin the County from taking legal action to interfere with employees engaging in the union activity of going on strike.	Request Withdrawn.
I.R. 448	United Food & Commercial Workers 588 Northern California v. Mendocino Coast District Hospital	UFCW sought to enjoin the Hospital from unilaterally reducing employee wages.	Request Denied.

2002-2003 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

DEC. NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 449	California Faculty Association v. Trustees of the California State University	CFA alleged that CSU refused to bargain regarding a “golden handshake” program in violation of the HEERA section 3571(a), (b) and (c).	Request Withdrawn.
I.R. 450	Solano County Deputy Sheriffs Association v. County of Solano	The Sheriff’s Association sought to enjoin the County from removing job classifications from Association represented Bargaining Units 3 and 4.	Request Withdrawn.
I.R. 451	California School Employees Association & its Chapter 528 v. Folsom- Cordova Unified School District	CSEA sought to enjoin the District from contracting out transportation services prior to the completion of bargaining.	Request Denied.
I.R. 452	State Employees Trades Council Local 1268, LIUNA AFL-CIO v. State Employees Trades Council United & Trustees of the California State University	Local 1268 sought to enjoin CSU from recognizing and bargaining with SETC United pending resolution of the amendment of certification case LA-AC-58-H; and from transmitting to SETC United dues money collected from Unit 6 members. The request also sought to enjoin SETC United from accepting dues and from causing CSU to violate HEERA in this manner.	Request Denied.

2002-2003 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

DEC. NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 453	John Rossmann v. Orange Unified Education Association & California Teachers Association	Mr. Rossmann sought to enjoin the Associations from implementing an agreement with the District on the issue of retirees' health care benefits.	Request Denied.
I.R. 454	Tulare County Corrections Association v. County of Tulare	The Association sought to enjoin the County from demoting bargaining unit employees prior to meeting and conferring.	Request Withdrawn.
I.R. 455	California Correctional Peace Officers Association v. State of California (Department of Corrections)	CCPOA sought to enjoin the State from bypassing the Union by directly surveying Unit 6 members regarding possible closure of the worksite.	Request Withdrawn.
I.R. 456	Visalia Firefighters Association v. City of Visalia	The Association sought to enjoin the City from implementing its last, best, and final offer regarding EMT II training for firefighters and require it to return to the bargaining table.	Request Denied. The Association filed a partial withdrawal and PERB issued a complaint and notice of partial withdrawal on 5/6/2003. The request was denied on 5/9/2003.



**APPENDIX IV-E (continued)**

**2002-2003 DECISIONS OF THE BOARD**

<b>DEC. NO.</b>	<b>CASE NAME</b>	<b>INJUNCTIVE RELIEF REQUESTS DESCRIPTION</b>	<b>DISPOSITION</b>
I.R. 459	Palo Alto Professional Firefighters, Local 1319, International Association of Fire Fighters v. City of Palo Alto	The Firefighters sought to enjoin the City from implementing changes to staffing and emergency response procedures prior to meeting and conferring over the issues involved.	Request Withdrawn.

## APPENDIX IV-F

### 2002-2003 LITIGATION ACTIVITY

Turlock Joint Elementary School District v. Public Employment Relations Board/Turlock Teachers Association Fifth District Court of Appeal, Case F041187 (PERB Decision No. 1490) [SA-CE-2003-E]. Issue: Did PERB err when it found the District violated the EERA by prohibiting teachers from wearing buttons in support of the union. Petition to Review a Final Order of the PERB filed on 8/7/2002. PERB lodged the Administrative Record on 9/30/2002. The District filed its Opening Brief on 10/22/2002. PERB and CTA filed Reply Briefs on 11/22/2002. The District filed its Reply Brief on 12/12/2002 and on 1/31/2003, the Court issued its Order Granting the Writ of Review and scheduling oral argument on 7/16/2003. PERB argued before the Court on 7/16/2003.

Laborers International Union of North America and Rocco Davis v. State Employees Trades Counsel United, et al. San Bernardino County Superior Court Case SCVSS 094642 (PERB Cases LA-AC-58-H and LA-CE-709-H) Issue: LIUNA requested that PERB file an amicus brief with the San Bernardino Superior Court “explaining that superior courts—not PERB—have jurisdiction to determine the contractual propriety under a union’s constitution of an alleged union restructuring, and the disposition of assets as a consequence thereof.” LIUNA filed its request that PERB file an amicus brief in support of its position on 11/4/2002. On 11/12/2002, PERB notified the parties of its intent to intervene in this case and claim jurisdiction over the issues. PERB filed its Application for Leave to Intervene; [Proposed] Complaint in Intervention; Declaration of Robert Thompson; and Memorandum of Points & Authorities on 11/14/2002. PERB appeared before the Court on 11/19/2002. The Court granted PERB’s request to intervene and stayed further action on the case until 4/30/2002 to allow PERB time to complete processing the underlying cases before it. PERB appeared telephonically for a case management conference on 4/30/2003 and the matter was continued until 7/29/2003 for a further status update.

B. Benedict Waters v. Tammy Samsel & Robert Thompson. U.S. District Court, Northern District of California, Case CVC 02 4589 EDL ADR. Issue: Plaintiff alleged that his due process rights guaranteed by the U.S. Constitution were violated in his dealings with the PERB employees named as Defendants. On 11/21/2002, PERB was served with the Summons and Complaint which had been filed with the Court on 9/23/2002. On 12/11/2002, the Attorney General’s Office filed a Notice of Motion and Motion to Dismiss Complaint and Memorandum of Points and Authorities on behalf of PERB’s employees. On 3/24/2003, PERB received the following information regarding the status of the case: Plaintiff filed a Notice and Motion for Inherent Power Sanctions against Defendants’ Lawyer. The Attorney General’s office filed a Notice of Motion to Strike and Motion to Strike. Hearing on this matter set for 4/22/2003. Plaintiff filed a First Amended Complaint on 3/14/2003. On 4/9/2003, the Court allowed Plaintiff to file an Amended Complaint within 20 days. On 5/13/2003, PERB received information that Mr. Waters had filed a Second Amended Complaint in which he named the Board members as Defendants. As of this time, we have not received an Amended Complaint and our Counsel has been unable to get additional information from the Court regarding the status of this case.

IUOE Local 39 v. County of Placer and Placer County Civil Service Commission [Cross-Complaint] County of Placer v. IUOE and PERB. Placer Co. Superior Court Case No. SCV 13694 (SA-CE-78-M). Issue: County requested Court to find PERB's administration of the MMBA over a Charter County is contrary to the California Constitution. On 12/13/2002, PERB was served with Placer County's Notice of Motion and Motion for Leave to File Cross Complaint; Supporting Papers; Memorandum of Points & Authorities; [Proposed] Order to Show Cause. Hearing was set for 2/4/2003. PERB filed its Opposition to Application for Order to Show Cause; Declaration of R. Thompson; and Memorandum of Points & Authorities in Opposition on 1/10/2003. PERB appeared before the Court on 2/4/2003. On 3/26/2003, the Court ruled that the County's Motion to File a Cross-Complaint and Motion for Preliminary Injunction and Stay are denied. On its own motion, the Court stayed the current Superior Court action pending resolution of the underlying PERB matter. An OSC regarding the status of PERB's process was held on 6/2/2003. PERB was the only party who appeared before the Court and the matter was rescheduled for 11/24/2003.

### **CLOSED CASES**

Part-Time Faculty United, AFT v. Santa Clarita Community College District (College of the Canyons). Second District Court of Appeal, Division One, Case B164811 (Decision 1506) [LA-CE-4357-E]. Issue: Did PERB err when it ruled that the District's recognition of COCFA as the exclusive representative of the part-time faculty during the AFT's organizing efforts on behalf of part-time faculty was a violation of the EERA? Petition for Writ of Extraordinary or Other Appropriate Relief filed by the District on 2/10/2003. PERB lodged the Administrative Record on 2/28/2003. On 3/14/2003, PERB filed Notice of Motion to Strike and Motion to Request Judicial Notice with Memorandum of Points & Authorities and Declaration of Robert Thompson. The District filed its Opposition to Motion to Strike; Memorandum of Points & Authorities in Support Thereof on 3/24/2003. On 4/1/2003, the District filed its Brief in Support of Petition for Writ of Extraordinary or Other Appropriate Relief; Motion for Judicial Notice; [Proposed] Order Granting Motion to Request Judicial Notice; and Administrative Authority. AFT filed its Opposition to Petitioner's Motion for Judicial Notice on 4/15/2003. PERB filed Respondent's Brief in Opposition on 4/30/2003. AFT filed its Brief in Opposition on 4/30/2003. CTA filed its Brief in Response on 5/1/2003. The District filed its Reply to Oppositions on 5/21/2003. On 6/5/2003, the Court summarily denied the Petition.

Laborers International Union of North America and Rocco Davis v. Superior Court for the County of San Bernardino, et al. Fourth District Court of Appeal, Division Two, Case E032780, appealing San Bernardino County Superior Court Case SCVSS 094642 (PERB Cases LA-AC-58-H and LA-CE-709-H) Issue: Did the Superior Court err when it found that PERB had jurisdiction over the underlying issues in this case? On 11/25/2002, LIUNA filed its Petition for Alternative Writ of Mandate. SETC filed its Preliminary Response on 12/5/2002 and the Court summarily denied the Petition for Alternative Writ of Mandate on 12/17/2002.

California School Employees Association and Gina Caruso v. Fremont-Newark Community College District First District Court of Appeal, Division Two, Case A093857. Issue: Should PERB file an amicus curiae brief supporting CSEA's position in a petition for rehearing of the above-entitled case before the Court of Appeal? CSEA filed its request that PERB file an amicus brief regarding jurisdictional issues in this case on 11/27/2002. The District filed its opposition to the request on 12/4/2002 and PERB denied the request on 12/6/2002.

State Personnel Board v. Superior Court and PERB with DPA, IUOE, CDC, PIA and State Controller as Real Parties in Interest. Third District Court of Appeal, Case 3 Civil C043020 (PERB Decision No. 1491-S) [SA-CE-1295-S]. Issue: Should the Court of Appeal stay PERB's administrative process? SPB filed a Petition for Writ of Prohibition and Immediate Stay on 1/10/03. Real Parties in Interest, DPA and IUOE filed Preliminary Oppositions to the Stay Request on 1/15/2003. PERB filed its Preliminary Opposition on 1/30/2003 and the Court summarily denied the Petition on 2/4/2003.

Connie Barretto v. City of Stockton. San Joaquin County Superior Court, Case CVO 18241. Issue: Should PERB intervene and assert initial exclusive jurisdiction? On 3/10/2003, PERB received a request for intervention from Counsel for the City of Stockton. On 3/11/2003, PERB sent a letter to Counsel for Ms. Barretto. On 3/14/2003, Plaintiff determined to withdraw the Superior Court case and file an unfair practice charge with PERB.

County of Placer v. Superior Court of Placer County / PERB and IUOE. Third District Court of Appeal, Case 3 Civil C043850 (SA-CE-78-M). Issue: Should PERB have jurisdiction over an unfair practice involving County employees? The County filed its Petition for Writ of Mandate and Request for Immediate Stay on 4/24/2003. The Court issued its Notice of Filing on 4/25/2003. IUOE filed its Initial Opposition on 4/29/2003. PERB filed its Preliminary Opposition on 4/29/2003. The County filed its Reply Letter to the Oppositions on 4/30/2003. On 4/30/2003, the Court issued its Order denying the Request for Stay. The Court denied the Petition for Writ of Mandate on 5/22/2003.

City of Anaheim v. Public Employment Relations Board / International Brotherhood of Electrical Workers, Local 47. Fourth District Court of Appeal, Division Three, Case G032237 (PERB Order No. Ad-321) [LA-CE-6-M]. Issue: Does PERB have jurisdiction over violations of the MMBA occurring more than six months prior to the filing of the charge and within the three-year statute of limitations set forth in Code of Civil Procedures section 338? Verified Petition for Writ of Mandate; Request for Immediate Stay; Request for Declaratory and Injunctive Relief; Motion for Judicial Notice; and [Proposed] Order Granting Judicial Notice filed on 5/8/2003. PERB filed its Preliminary Opposition on 5/12/2003. The City filed its Reply to PERB's Preliminary Opposition on 5/14/2003. On 6/4/2003, the City filed a Notice that the Orange County Superior Court had denied its Request for Stay and Petition for Writ of Mandate on 6/3/2003. The Court summarily denied the petition on 6/11/2003.

City of Anaheim v. Public Employment Relations Board / International Brotherhood of Electrical Workers, Local 47. Orange County Superior Court, Case 03CC01047 (PERB Order No. Ad-321) [LA-CE-6-M]. Issue: Does PERB have jurisdiction over violations of the MMBA occurring more than six months prior to the filing of the charge and within the three-

year statute of limitations set forth in Code of Civil Procedures section 338? Verified Petition for Writ of Mandate; Request for Immediate Stay; Request for Declaratory and Injunctive Relief; Motion for Judicial Notice; and [Proposed] Order Granting Judicial Notice filed on 5/9/2003. Also on 5/9/2003, the City filed and served its Notice of Ex Parte Hearing for 5/13/2003. On 5/12/2003, PERB filed its Preliminary Opposition and confirmation of its telephonic appearance. The City filed its Response to PERB's Preliminary Opposition on 5/13/2003. PERB appeared telephonically on 5/13/2003. The Court continued the matter to 6/3/2003 in order to gather additional information. On 5/15/2003, PERB filed a letter brief per the Court's request. On 5/19/2003, the City filed its response to PERB's letter brief. On 6/3/2003, PERB appeared telephonically and the Court denied the Request for Stay and the Petition for Writ of Mandate. PERB prepared and served the Court's Order.

County of San Joaquin (Health Care Services) v. PERB / UAPD. Third District Court of Appeal, Case 3 Civil C044230 (PERB Decision 1524) [SA-CE-19-M]. Issue: Did PERB err when it decided that the County had discriminated against Dr. Gran and when it made Dr. Gran whole for expenses incurred during the Medical peer review proceeding? Petition for Review filed on 6/11/2003. PERB filed an Application for Extension of Time to Lodge the Administrative Record on 6/16/2003. On 6/17/2003, the Court granted PERB's request. The Administrative Record is due to be lodged with the Court on 7/23/2003.

Huntington Beach Union High School District v. PERB / District Educators Association, CTA/NEA. Fourth District Court of Appeal, Division Three, Case G032402 (PERB Decision No. 1525) [LA-CE-4234-E]. Issue: Did PERB exceed its jurisdiction when it ordered the District to delete all references in job descriptions for librarians to any workday other than the traditional workday and to negotiate with the Association regarding any future changes in work hours for librarians. Petition for Review filed on 6/12/2003. PERB filed an Application for Extension of Time to Lodge the Administrative Record on 6/16/2003. On 6/17/2003, the Court granted PERB's request. The Administrative Record is due to be lodged with the Court on 7/22/2003.